~~SECRET~~

[redacted] 25X1

Memorandum For: Robert Gates

From: [redacted] 25X1

Subject: US options on implementing economic sanctions against Libya.

The discussion of options available to the US for implementing economic sanctions against Libya are clear and all inclusive. From the list, option #2 seems the most reasonable compromise between the conflicting interests of US firms and US policy intentions.

-- Option #2 reduces the cost to US firms, while not significantly reducing the impact of US economic sanctions

-- Reasonable limits could be established on the additional time allowed for US firms to sell their assets in Libya after which legal penalties would result if business continued.

-- Libyan assets frozen in the US provides some recource for those firms unable to resolve operations within the new time constraints.

-- Adoption of option #2 would leave open the door for new US requests for European support for economic sanctions against Libya.

Other options available to the US include the select use of extraterritoriality to prevent the continued sale of embargoed US goods to Libya by foreign countries. For example, Libya's

~~SECRET~~

25X1

national airline is in need of spare parts for its Boeing aircraft. France and other West European states have been willing to supply such parts to keep Libyan planes safe. The US could threaten to stop the sale of Boeing parts or flights into the US of such nations that continue to assist Libya in circumventing US economic sanctions. This policy would be consistent with option #2.

LIBYAN ECONOMIC SANCTIONS

ISSUE FOR DECISION

Implementing our January 7 decision to sever economic ties with Libya raises some political and economic questions. Our choices would appear to be: 1) order all companies to sever their ties immediately, preserving our political position but letting Qadhafi realize substantial economic benefits; 2) give some companies an extension to work out prompt termination arrangements with Libya, potentially limiting the economic benefits to Libya but allowing some U.S. business beyond the February 1 deadline; or 3) allow some companies to transfer their operations to foreign subsidiaries, substanially reducing windfalls to Libya, but shifting rather than severing some major economic ties.

ESSENTIAL FACTORS

Some U.S. companies operating in Libya face the prospect of forfeiting substantial assets to Libya if the February 1 deadline and its prohibition on transactions with Libya are enforced strictly. They have argued that this would give Qadhafi an economic windfall. This would be an undesirable result. The Executive Orders were not intended to give Libya an economic boon.

To avoid this result (and substantial losses to themselves), these companies are asking permission to transfer their Libyan operations to their foreign subsidiaries. This too is undesirable, because it may undermine the credibility of our economic sanctions program, giving an appearance of irresoluteness and confusing the signals we have been trying to give both Qadhafi and our allies. While transfer might be with conditions (e.g., revocable, remittances to the U.S. prohibited), we could not impose meaningful production limits, since the Libyan government controls those decisions under the concession agreements. Also undesirable would be the transfer of these assets or contracts to foreign companies, since we are simultaneously attempting to convince their governments to join us in reducing ties with Libya, or at least to refrain from filling in for our companies.

The potential windfall is hard to quantify. The five oil concessionaires argue, reasonably, that Libya will legally be entitled to cancel the concessions if the companies can't fulfill their obligations over a several month period with no clear prospect of relief, even if the cause is recognized to be force majeure. (The concessions are governed by Libyan law.) The clock would start ticking when they default on their January 31 payment obligations (which total about $178 million). Unless the concessionaires regain their rights after a change in government in Libya, which can't be considered too likely, the economic benefit to Libya would be the present value of the entire long-term concessions. If Libya were to resell the concession shares for an immediate infusion of cash, the windfall might be estimated at about $700 (fair market value calculated at 4 times recent average earnings). However, such estimates are very speculative, particularly given the current oil market depression and the possibility that the companies can tie the title up in arbitration for a time. If Libya were to market the oil itself and pocket for twenty or so years the $1-$1.50 per barrel profit the companies have been making, the "windfall" might have a discounted present cash value of approximately $1 billion (assuming a 10% discount factor and a steady rate of production and profit margins).

The windfall in the case of two service company situations we have looked at could be in the range of $44-50 million (in equipment and accounts receivable). Similar situations may raise the windfall from service companies above $200 million. These companies operate in the oil, construction and other sectors. Their situations are not so long-term, however. It is less clear that Libya would be legally entitled to the full amounts these companies claim to have at risk than it is that Libya would have rights to take back the oil concessions.

The U.S. freeze of Libyan government assets gives us some leverage to reduce the economic windfall to Libya. A conditional offer to release the frozen assets might get Libya to make reasonable settlement of the various accounts outstanding and damage claims, to allow removal of valuable equipment or pay a reasonable price for it, and perhaps to pay something for the concession rights or suspend rather than revoke them. The amount of assets in the U.S. itself, our firmest leverage, has not yet been accurately determined.

It now appears likely that Libya would suffer minimal short term dislocation costs if the U.S. concessions and service contracts were terminated rather than transferred. The operation of Libyan oil fields is relatively simple, not requiring advanced technology, and companies of a wide variety of nationalities, including east bloc companies, are providing oil services in Libya and might well increase their involvement.

Pull-out of any subcontractor American personnel is not expected to interrupt or significantly reduce production. Moreover, withdrawal of American personnel in Libya would not be impaired by continuation or transfer of concessions or service contracts to foreign subsidiaries: the concessionaires have no such personnel there; the service subcontracts contemplate replacing any remaining Americans (required in any event under the travel and activities transaction ban and unrelated to ownership of the contracts). Since Libyan exit visas are required, some Americans might become hostage to the payment of disputed damages and tax claims by their employers, if the companies are not allowed to complete their contracts, directly or through subsidiaries.

Libya's greatest vulnerability may lie in its need to replace the marketing arrangements provided by the U.S. companies for their share of field production. However, Libya is now marketing its own majority share, has a reportedly capable marketing staff, and could discount the oil (up to the $1-$1.50 per barrel concessionaire profit) if necessary to preserve market share, without any economic loss.

OPTIONS

The basic options are:

1. Deny applications to transfer to subsidiaries and refuse to permit any substantial continued performance after February 1, using possible release of Libya's assets as leverage to reduce any potential economic benefit to it.

2. Deny transfer to foreign subsidiaries, but allow temporary performance after February 1 of concession and selected service contracts (where immediate termination would give Libya disproportionate windfalls) while companies to work out arrangements with Libya to terminate as soon as possible, similarly using the asset freeze leverage.

3. Allow the companies to transfer oil rights to foreign subsidiaries and provide similar relief to selected service contractors. Service companies would be required to terminate as soon as possible. Licenses would be made revocable and conditions could be attached (e.g., remittances to the U.S. would be barred, and the subsidiaries would be required to limit themselves to meeting the concession obligations).

DISCUSSION OF OPTIONS

1. Deny applications to transfer to subsidiaries and refuse to permit any substantial continued performance after February 1.

Pros

- Most clearly consistent with political message of complete U.S. - Libya economic severance by February 1;
- Avoids any further "business as usual";
- Payment by oil companies of $178 million owed Libya is deferred until assets are generally unfrozen.

Cons

- Puts concessionaires in default, strengthening Libya's case in any subsequent settlement;
- Has most substantial "windfall" potential to Libya (possibly as much as $1 billion before asset freeze release negotiations);
- Would not avoid the need to negotiate terms of asset freeze dissolution.

2. Deny transfer to foreign subsidiaries, but allow temporary performance of concession and service contracts while companies to work out arrangements with Libya.

Pros

- Might reduce windfalls more than option 1, letting companies negotiate without being clearly in default;
- Would be less confusing political signal than transfer to subsidiaries;

Cons

- Would allow some business as usual directly by U.S. companies while settlement arrangements are worked out, including oil company pay out of $178 million;
- Would involve difficult company negotiations and some unavoidable U.S.-Libyan negotiation, direct or indirect, over terms for unfreezing assets;
- Assets frozen in U.S. (amount not yet determined) unlikely to get Libya to compensate for concession rights and avoid that economic benefit to Libya;

3. <u>Allow companies to transfer oil rights to foreign subsidiaries and provide similar relief to service contractors where immediate termination would give Libya undue windfalls.</u>

<u>Pros</u>

- Would prevent large windfalls to Libya of U.S. company assets;
- Would avoid U.S. company losses and meet their request;
- Would be relatively simple to implement.

<u>Cons</u>

- Would undercut argument that U.S. had severed economic ties with Libya and could be subject to criticism that the sanctions are hypocritical and a sham;
- Would undercut opposition to third-country fill-in in other sectors;
- Would probably require us to allow oil companies immediately to pay $178 million currently owed Libya.